

## INDEX

|  |    |
|--|----|
| Statement .....  | 1  |
| Summary of Argument .....  | 2  |
| Argument:  |    |
| I. Decisions of state and lower federal courts are in disagreement as to the application of the equal representation rule to school districts. Those decisions which apply the doctrine to school units fail to consider the difference between special purpose government units and general governing units .....   | 3  |
| II. The equal representation doctrine is applicable to units of local government only when they have general governmental powers over the entire geographic area served by the body. The doctrine is not applicable to special purpose districts such as junior college districts. This principle is set forth in this Court's decisions in <i>Sailors and Avery</i> .....             | 6  |
| III. The Junior College District of Metropolitan Kansas City is the unit of local government with a specialized purpose and functions. It is not a unit of local government with general governmental powers. Accordingly, the doctrine of equal representation does not apply to the election of trustees of the junior college district under Section 178.820, RSMo Supp. 1967 ..... | 11 |
| Conclusion .....   | 15 |

### Citations

#### CASES:

|   |                           |
|---|---------------------------|
| <i>Avery v. Midland County, et al.</i> , 390 U.S. 474 ..... | 2, 3, 4, 8, 9, 10, 14, 15 |
|---|---------------------------|

|   |                    |
|---|--------------------|
| <i>Delozier, et al. v. Tyrone Area School Board</i> , 247<br>F. Supp. 30 .....  | 4, 6, 9            |
| <i>Hadley, et al. v. Junior College District of Metro-<br/>politan Kansas City, et al.</i> , Mo., 432 S.W.2d 328 .... | 3                  |
| <i>Meyer, et al. v. Campbell, et al.</i> , Iowa, 152 N.W.2d<br>617 .....  | 4, 5, 6, 9         |
| <i>Montella, et al. v. Camillo, et al.</i> , Pa., 228 A.2d 775 ....   | 3                  |
| <i>Reynolds v. Sims</i> , 377 U.S. 533 .....  | 2, 10, 15          |
| <i>Sailors, et al. v. Board of Education of the County<br/>of Kent, et al.</i> , 387 U.S. 105 .....                   | 2, 4, 6, 7, 14, 15 |
| <i>Strickland, et al. v. Burns, et al.</i> , 256 F.Supp. 824 ....<br>.....  | 3-4, 5, 6, 9       |
| <i>Wright, et al. v. Board of Education of St. Louis,<br/>Mo.</i> , 246 S.W. 43 .....                                 | 13                 |

## STATUTES:

|  |        |
|--|--------|
| Chapter 164, RSMo Supp. 1967 .....     | 11     |
| Section 164.121, RSMo Supp. 1967 ..... | 12     |
| Section 167.161, RSMo Supp. 1967 ..... | 12     |
| Section 171.011, RSMo Supp. 1967 ..... | 12     |
| Section 177.011, RSMo Supp. 1967 ..... | 12     |
| Section 177.031, RSMo Supp. 1967 ..... | 12     |
| Section 177.041, RSMo Supp. 1967 ..... | 12     |
| Section 178.770, RSMo Supp. 1967 ..... | 11, 12 |
| Section 178.780, RSMo Supp. 1967 ..... | 11     |
| Section 178.790, RSMo Supp. 1967 ..... | 11     |
| Section 178.820, RSMo Supp. 1967 ..... | 7, 11  |
| Section 178.850, RSMo Supp. 1967 ..... | 12     |
| Section 178.860, RSMo Supp. 1967 ..... | 12     |
| Section 178.870, RSMo Supp. 1967 ..... | 11, 12 |
| Section 178.890, RSMo Supp. 1967 ..... | 12     |

**IN THE  
SUPREME COURT OF THE UNITED STATES**

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OCTOBER TERM, 1968

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**No. 938**

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DELLA HADLEY, et al.,  
*Appellants,*

v.

THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN  
KANSAS CITY, MISSOURI, et al.,  
*Appellees*

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ON APPEAL FROM THE SUPREME COURT OF MISSOURI

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**BRIEF OF APPELLEE, ATTORNEY GENERAL  
OF MISSOURI**

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**STATEMENT**

We consider the statement of the case by appellants and compliance with Rule 40, paragraph 1, subparagraphs (a), (b), (c) and (d) to be sufficient, and we will not restate these matters in this brief.

## SUMMARY OF ARGUMENT

Two federal district courts and the Supreme Court of Iowa have applied the equal representation rule of *Reynolds v. Sims*, 377 U.S. 533, to local or county school districts. These decisions, rendered prior to *Avery v. Midland County*, 390 U.S. 474, have failed, however, to consider the differences between the special purpose government units and general government units. Further, the Supreme Courts of Pennsylvania and Missouri have concluded that the equal representation rule does not apply to school districts.

In *Sailors, et al. v. Board of Education of the County of Kent, et al.*, 387 U.S. 105, and *Avery v. Midland County*, supra, this Court set forth the principle that the equal representation rule only applies where the local governmental unit has general governing powers over the entire geographic area served. This Court has not extended the *Reynolds* rule beyond municipalities such as counties.

The Junior College District of Metropolitan Kansas City is a local governmental unit with limited special purpose powers. With the exception of the power to tax, its powers are practically the same as any private corporate junior college. In contrast to counties and cities, it does not make, enforce or adjudicate laws and it does not exercise the police power of the state. Its governmental functions, though very important, are limited to operating an educational institution. It is not in the sense defined in *Avery* a unit of local government having general governmental powers.

Thus, this court should affirm the decision of the Missouri Supreme Court holding that the *Reynolds* rule does not apply to the election of trustees by Missouri junior college districts.

## ARGUMENT

### I.

Decisions of state and lower federal courts are in disagreement as to the application of the equal representation rule to school districts. Those decisions which apply the doctrine to school units fail to consider the difference between special purpose government units and general governing units.

The Supreme Court of Missouri in the instant case held that Missouri junior college districts were not a unit of local government having general governmental powers over the entire geographic area served by the body and thus the equal representation doctrine did not apply to the election of trustees of the district. *Hadley, et al. v. Junior College District of Metropolitan Kansas City, et al., Mo.*, 432 S.W.2d 328.

In a very brief opinion the Supreme Court of Pennsylvania held, ". . . taxpayers or other citizens [do not have] . . . any Constitutional or other right to proportionate representation on school boards. . . ." *Montella, et al. v. Camillo, et al., Pa.*, 228 A.2d 775, 777.

Both the Pennsylvania and Missouri cases directly dealt with school boards. Both courts found that the equal representation doctrine was not applicable to public school districts. The Missouri case is the only decision subsequent to this Court's opinion in *Avery v. Midland County, et al.*, 390 U.S. 474.

Appellants, in support of their position, have presented to this Court the cases of *Strickland, et al. v. Burns*,

*et al.*, D.C. Tenn., 256 F.Supp. 824; *Delozier, et al. v. Tyrone Area School Board*, D.C. Pa., 247 F.Supp. 30; and *Meyer, et al. v. Campbell, et al.*, Iowa, 152 N.W.2d 617. All of these cases were decided prior to this Court's decision in *Avery v. Midland County, et al.*, supra. *Strickland* and *Delozier* were decided prior to this Court's decision in *Sailors, et al. v. Board of Education of the County of Kent, et al.*, 387 U.S. 105.

Of these cases, only *Delozier* deals with a school board. *Meyer* and *Strickland* involve county boards of education, a governing entity of broader jurisdiction.

The Federal District Court in *Delozier* applied the equal representation doctrine to a public school district. The court there stated (247 F.Supp. 30, 35), ". . . While school boards are subject to numerous limitations in the exercise of local powers, these limitations are no less in scope or variety than the limitations imposed on other governmental subdivisions or municipal corporations. The encroachment of state control and the extent and variety of state financial aid extends to all forms of political subdivisions in the state as well as to school boards."

The authorities cited by the District Court in support of its decision do not deal with special governmental entities but rather concern local governmental units having broad general governmental functions, namely, city councils, county courts and township boards. *Delozier*, supra, l.c. 36.

The District Court in *Delozier* obviously threw all local governmental entities in the same category without consideration of the nature or functions of the unit of government, without distinguishing between school districts and other special purpose districts and general governing units. With one broad indiscriminate stroke the

court applied the equal representation doctrine to every unit of local government.

The District Court in *Strickland, et al. v. Burns, et al.*, D.C. Tenn., 256 F.Supp. 824 (1966) also indiscriminately applied the equal representation doctrine to all units of local government. The court's decision is simply premised as follows, l.c. 826: "... the rationale of the *Reynolds* decision . . . is logically as applicable to the backwaters of representative government at the local level as to the fountainhead of representative government at the state level."

The Supreme Court of Iowa in *Meyer, et al. v. Campbell, et al.*, Iowa, 152 N.W.2d 617, also applied the equal representation doctrine without consideration of the variety of natures and functions of local governmental units. The court there applied the doctrine to an elected county board of education. The decision was founded on the premise that (l.c. 621) "... any inferior *elective* body, that is representative of the people, [must] be representative of all the people equally. . . ."

The court in *Meyer* discussed this Court's opinion in *Sailors* and concluded that this Court did not apply the equal representation doctrine in that case because the members of the county board of education were appointed rather than elected. The Iowa court stated, l.c. 623:

"... it is reasonable to believe that where the legislature chooses to submit the selection of an official or board to the electorate, it is of no consequence whether its functions affecting the personal and property rights of the people are administrative or legislative. . . ."

We are of the view that the Iowa court erroneously interpreted the *Sailors* opinion in that it gave undue

weight to form rather than substance and that the application of the equal representation doctrine should depend upon the nature and functions of the governmental entity and not upon the manner by which its officers are selected. In Point II we will discuss *Sailors*.

The Delozier, Strickland and Meyer decisions would indiscriminately apply the equal representation doctrine to every drainage, fire protection, health, levee, road, sewer, etc., etc., special purpose district. We are of the view that the doctrine is better applied upon consideration of the particular nature and functions of the governmental unit in question.

## II.

**The equal representation doctrine is applicable to units of local government only when they have general governmental powers over the entire geographic area served by the body. The doctrine is not applicable to special purpose districts such as junior college districts. This principle is set forth in this Court's decisions in *Sailors* and *Avery*.**

In *Sailors, et al. v. Board of Education of County of Kent, et al.*, 387 U.S. 105, this Court refused to apply the equal representation doctrine to a county board of education stating that it "... performs essentially administrative functions, and while they are important, they are not legislative in the classical sense." *Id.* 110. The court further took note of the "basically appointive rather than elective" means of electing the members of the county board of education.

The respective population and representation of the election districts in *Sailors* were set down in the District Court's opinion (254 F.Supp. 17), as follows: Each school district within the county had one vote on the county



board. The Grand Rapids School District had a population of 201,777. Some of the other school districts had a population of 99, 111, 117 and 145. Grand Rapids had 55.6% of the population of the county. There were 39 school districts in the county. Nevertheless, Grand Rapids had only 1 vote on the county board. The relative voting power between Grand Rapids and the other districts was about 200 to 1. *Factually there was gross inequity in representation.*

If we assume that this Court in *Sailors* refused to apply the equal representation doctrine because the members of the board were not directly elected, then we may assume that a state may evade the constitutional requirements of equal representation merely by providing a two-step system of election. In the present case elementary and secondary public school districts form components of the junior college district. These component school districts also serve as election districts under Section 178.820, RSMo Supp. 1967. If the state legislature had provided that junior college district trustees would be elected by the members of the boards of education of the component school districts rather than by direct popular election, we would have a factual situation identical to that presented in *Sailors*. If appointive rather than elective selection were the criteria, then the two-step method would be constitutional regardless of the degree of unequal representation!

We are of the view that a rule applying the equal representation doctrine based upon whether or not the election is direct or two-step would give greater weight to form than to substance. It is more reasonable to apply or not apply the equal representation doctrine on the basis of the nature and function of the governmental units

than to apply or not apply the doctrine based upon the procedures of selecting representatives. If the people are significantly affected and vitally interested in a unit of local government and if they would be detrimentally affected by governing representatives who did not proportionately represent the population, then these interests would be important, vital and worthy of constitutional protection regardless of the procedure for selecting the governing representatives.

We are of the view that the special purpose, nonlegislative character of the county board of education was the determining factor in *Sailors* rather than the two-step appointive manner of selection.

In *Avery v. Midland County, et al.*, 390 U.S. 474, this Court considered the application of the equal representation doctrine to a county commissioner's court. This Court looked to the nature and function of that unit of local government. Those functions were described by quoting from a comment of Vernon's Annotated Texas Statutes, Constitution, Article V, Section 18 (1955) as follows, *Avery*, supra, 476: "[The commissioner's court] 'is the general governing body of the county. It establishes a courthouse and jail, appoints numerous minor officials such as the county health officer, fills vacancies in the county offices, lets contracts in the name of the county, builds roads and bridges, administers the county's public welfare services, performs numerous duties in regard to elections, sets the county tax rate, issues bonds, adopts the county budget, and serves as a board of equalization for tax assessments.'" This Court also found that the county commissioner's court was also authorized to build and run a hospital, an airport, to fix school district boundaries and to establish regional public housing au-

thorities. Although Midland County, as many counties, had numerous officials who were selected by direct popular election, it is noted that the county commissioner's court possessed the taxing and budget powers and thus had a strong method of control of all county offices. This Court found (l.c. 484) ". . . that the powers of the Commissioner's Court include the authority to make a substantial number of decisions that affect all citizens. . . ."

This Court held, *Avery*, supra, 484, 485, ". . . the Constitution permits no substantial variation from equal population in drawing districts for units of local government having general governmental powers over the entire geographic area served by the body."

It is clear that this Court has rejected the indiscriminate application of the equal representation doctrine to all units of local government as had been made by the courts in *Delozier*, *Strickland* and *Meyer*.

One obiter dicta statement by this Court in the *Avery* decision warrants discussion. The majority opinion contains the following statement, l.c. 480, ". . . If voters residing in oversize districts are denied their constitutional right to participate in the election of state legislators, precisely the same kind of deprivation occurs when the members of a city council, school board, or county governing board are elected from districts of substantially unequal population. . . ." (Emphasis added)

It would seem that the court by dicta has indicated that the equal representation doctrine applies to school boards. We are of the view that a reading of the entire opinion compels the conclusion that the insertion of the words school board in the above-quoted sentence is a misprision and not the opinion of this Court. Although the *Avery* opinion frequently mentioned cities, towns and

counties in a similar context as at page 480, school boards are not mentioned any other time. We do not believe that school boards fit within the description expressed in the court's holding, that is, "units of local government having general governmental powers over the entire geographic area served by the body."

In every other place throughout the Avery opinion where this court lists types of local governmental units school boards are not included in the list. For example, at page 480, ". . . A city, town, or county may no more deny the equal protection of the laws than it may abridge freedom of speech. . . ." At page 481, ". . . We therefore see little difference, in terms of the application of the Equal Protection Clause and of the principles of *Reynolds v. Sims*, between the exercise of state power through legislatures and its exercise by elected officials in cities, towns, and counties." At page 482, ". . . In this regard Midland County's Commissioner's Court is representative of most of the general governing bodies of American cities, counties, towns, and villages. . . ." Since school districts or school boards are omitted on every other occasion in the opinion when units of local government are listed, we must assume that the inclusion of school boards in the one instance on page 480 was not deliberate. Furthermore, since school districts are not general governing bodies, we conclude that they are not within the ruling of *Avery*.

It is our view that whether or not the equal representation doctrine applies to a unit of local government depends upon the nature and function of the unit, and that only units of local government having general governmental powers are within the coverage of the equal representation rule. We shall attempt to demonstrate in

Argument No. III that the Junior College District of Metropolitan Kansas City is a special purpose district and not a unit of local government having general governmental powers.

### III.

**The Junior College District of Metropolitan Kansas City is the unit of local government with a specialized purpose and functions. It is not a unit of local government with general governmental powers. Accordingly, the doctrine of equal representation does not apply to the election of trustees of the junior college district under Section 178.820, RSMo Supp. 1967.**

The nature and functions of the junior college district are prescribed by statutes as follows:

After initiation by petition and approval of the State Board of Education the junior college district may be established upon approval of a majority of the voters within the proposed district. At all times the boundaries of the district must be coextensive with the boundaries of the elementary secondary public school districts within the area. These districts are referred to as component school districts of the junior college district. Section 178.770 to 178.790, RSMo Supp. 1967.

The district, once established, is a body corporate and a subdivision of the State of Missouri. Section 178.770.

Six trustees are elected by popular vote to operate the district. The trustees are elected at large or from component school districts based upon relative school enumeration. Section 178.820. The district has authority to levy taxes but levies in excess of the base levy authorized by Section 178.870 require voter approval under Chapter 164, RSMo Supp. 1967.

The district may issue bonds upon approval of the voters. Section 164.121.

The board of trustees of this junior college district have the following powers and functions:

1. To sue and be sued. Section 178.770, subsection 2.
2. To levy and collect taxes. Section 178.770, subsection 2. Section 178.870.
3. To issue bonds after voter authorization. Section 178.770. Section 2.
4. To provide instruction principally at the collegiate level. Section 178.850.
5. To employ teachers and other necessary personnel and to fix their duties and compensation. Section 178.860.
6. To pass upon petitions for annexation. Section 178.890.
7. To acquire property by condemnation. Section 177.041.
8. To hold title to and exercise control over all property of the district and to provide for its maintenance. Sections 177.011 and 177.031.
9. To make rules and govern the school and its pupils. Section 167.161 and Section 171.011.

Parenthetically we note that the appellants at page 10 of their brief have asserted that school districts have the power to maintain their own fire and police protection. If this is intended in the same sense that any home owner may provide for the protection of his home, this is true. However, junior college district does not have any power

to provide general police and fire protection to the community.

The single purpose for existence of the junior college district is to provide education. Although this is an extremely important purpose, nonetheless, it is a very limited purpose. The several powers which we have enumerated above are all merely incident to the district's primary educational purpose.

The principal governmental power of a junior college district is exercised by the voters and the state legislature. Only the electorate can authorize the creation of the district, the levying of taxes in excess of the constitutional base and the issuance of bonds.

A junior college district, as all school districts, does not have inherent powers. These districts have only such powers as are expressly granted by the legislature or as can be necessarily implied from the expressly granted powers. The legislature, at its will, may grant or withhold these powers. *Wright, et al. v. Board of Education of St. Louis, Mo.*, 246 S.W. 43, 45.

The governmental functions remaining in the hands of the trustees of the junior college district are of an administrative character, namely, the providing for buildings and equipment and the care and maintenance, the providing for the control and government of pupils, employing of necessary personnel and the general day to day business of the educational corporation.

The special purpose and limited powers of a junior college district stand in sharp contrast to the general governmental functions of a municipality. Counties, cities, towns and villages possess quasi sovereignty. Municipal governments include executive, legislative and judicial



departments. They have the power of lawmaker, law enforcer and law interpreter. Municipalities exercise the police power. They license, regulate, prohibit businesses and other matters for the safety, health and welfare of the general public within their boundaries. Municipalities provide common services to all persons within their boundaries such as streets, sewers and other utilities, and fire and police protection. They are in a true sense general governing bodies.

Junior college districts possess none of these general governing powers. In fact, in many ways a public junior college district is more like a private corporate college than it is a governmental unit.

Private corporate colleges have the power to sue and be sued. They may issue bonds. They provide instruction, employ teachers and other personnel, hold title to and exercise control over property and govern the school and its pupils. Perhaps the only significant difference between the powers of a private and a public junior college is the source of revenue. Private institutions, of course, cannot levy taxes. They may, however, benefit from governmental assistance. Since almost every governmental unit has taxing power, we do not believe this is sufficient criteria to warrant application of the equal representation doctrine on this basis alone.

We submit that the Junior College District of Metropolitan Kansas City is a special purpose unit of local government and not a unit with general governmental powers and that under this Court's decisions in *Sailors* and *Avery* the equal representation doctrine does not apply to the election of trustees of the district.



### CONCLUSION

Based upon the foregoing arguments, the Attorney General of Missouri submits that the judgment of the Supreme Court of Missouri should be affirmed in all respects for the reason that it correctly applies the principles laid down in *Reynolds*, *Sailors* and *Avery* to the election of trustees of the Junior College District of Metropolitan Kansas City.

Respectfully submitted,

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